

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 31613

MICHAEL HUYCK and LYNN HUYCK,	)	2008 Unpublished Opinion No. 552
husband and wife,	)	
	)	Filed: July 16, 2008
Plaintiffs-Respondents,	)	
	)	Stephen W. Kenyon, Clerk
v.	)	
	)	THIS IS AN UNPUBLISHED
LAWRENCE G. MORTON and TRUDI M.	)	OPINION AND SHALL NOT
MORTON, husband and wife, and any and	)	BE CITED AS AUTHORITY
all heirs, devisees, creditors, and/or assignees,	)	
transferees, successors in interest to any and	)	
all property located in the East half of	)	
Southeast quarter of the Northwest quarter	)	
of Section 17, Township 57 North, Range 2	)	
West, of the Boise Meridian, in Bonner	)	
County, Idaho, as more particularly	)	
described herein,	)	
	)	
Defendants-Appellants.	)	

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Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Steven C. Verby, District Judge.

Order of contempt, affirmed; judgment for attorney fees and sanctions, affirmed in part and reversed in part.

Tevis W. Hull, P.A., Sagle, for appellant.

Brent C. Featherston of Featherston Law Firm, Chtd., Sandpoint, for respondent.

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LANSING, Judge

Lawrence G. Morton and Trudi M. Morton appeal from orders of the district court finding Lawrence Morton in contempt of a permanent injunction issued in this case and awarding attorney fees against the Mortons. We affirm in part and reverse in part.

**I.**  
**FACTS AND PROCEDURE**

This case originated with a complaint for a declaratory judgment filed by Michael and Lynne Huyck seeking confirmation of an easement for ingress, egress, and utilities to their property over property owned by Lawrence and Trudi Morton. Three days after they filed their complaint, the Huycks filed a motion for a preliminary injunction prohibiting the Mortons from interfering with the Huycks' use of the easement or engaging in harassing or threatening activities with regard to the easement. On the day set for a hearing on this motion, the Mortons signed a stipulation for entry of a preliminary injunction.

Fifteen months later, the district court partially granted the Huycks' motion for summary judgment, holding that they held a thirty-foot easement for ingress and egress to their property across the Mortons' property. After a court trial was conducted on remaining issues, the district court entered a permanent injunction prohibiting the Mortons, or anyone acting in concert with them, from harassing, impeding or interfering with the Huycks' or their agents' use and enjoyment of the easement. No final judgment was entered at that time.

Nine months later, the Huycks filed a motion to hold the Mortons in contempt for violating the permanent injunction. Following an evidentiary hearing, the district court found Lawrence Morton in contempt and ordered that he pay the attorney fees incurred by the Huycks for the contempt proceedings as a sanction pursuant to Idaho Code § 7-610. The district court also awarded I.C. § 12-123 attorney fees to the Huycks' on the ground that the Mortons had frivolously defended against the Huycks' motion for a preliminary injunction and their summary judgment motion. These attorney fee awards were included in a final judgment entered in July 2005.

The Mortons appeal, challenging the contempt order and the award of attorney fees for the contempt proceedings and the preliminary injunction.<sup>1</sup>

**A. Sufficiency of the Evidence re: Findings of Contempt**

Lawrence Morton first asserts that the district court's findings that he acted in contempt of the permanent injunction are not supported by substantial and competent evidence.

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<sup>1</sup> The Mortons do not appeal the award of fees related to the summary judgment proceedings.

The permanent injunction prohibited the Mortons from obstructing, harassing, impeding or interfering with the Huycks' quiet use and enjoyment of the easement. In their affidavit alleging contempt,<sup>2</sup> the Huycks' asserted that Lawrence Morton had harassed Michael Huyck when Michael drove to the Huycks' mailbox along the easement route to pick up mail and turned his vehicle around in the easement. They contended that Lawrence swore at Michael, orally challenged his right to use the area for a turn-around, and made an offensive hand gesture at Michael. The district court found that this occurred, and that factual finding is supported by evidence adduced at the hearing, specifically Michael's testimony.

The Huycks' also alleged that they observed Lawrence using a backhoe to pick up snow and then pile big snow balls in the easement area in front of the mailboxes. Although the district court made no express finding on this allegation, from the court's recital of the testimony and its findings regarding the credibility of the witnesses, we infer that the district court found that this interference through piling of snow occurred.<sup>3</sup> There is ample evidence through Lynn Huyck's testimony to support the court's implied finding that Lawrence interfered with the use of the easement in this manner.

The district court also found that "individuals" parked on the easement on certain occasions. Lawrence both challenges the sufficiency of the evidence to sustain these factual findings and complains that the district court improperly found him in contempt for actions of third persons. We do not reach these questions because, as noted above, other acts which the district court found were personally committed by Lawrence are sufficient to sustain the finding of contempt. For this same reason, we need not address the Mortons' argument that because the finding of contempt was error, the award of attorney fees to the Mortons incurred in the contempt proceedings must be vacated.

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<sup>2</sup> In a contempt proceeding, the affidavit serves as the complaint. *See Steiner v. Gilbert*, 144 Idaho 240, 244, 159 P.3d 877, 881 (2007).

<sup>3</sup> Lawrence does not challenge the sufficiency of the district court's factual findings, but they are not satisfactory. The "findings" primarily describe controverted testimony that was presented on a particular issue, without making clear factual findings as to what happened on any particular occasion. Findings of fact should be specific and unequivocal statements of what the court found to be true, not just a recital of conflicting evidence.

The district court's findings that Lawrence Morton committed acts in contempt of the permanent injunction are supported by substantial and competent evidence and will not be disturbed on appeal. *Steiner v. Gilbert*, 144 Idaho 240, 243, 159 P.3d 877, 880 (2007).

**B. Attorney Fees in Defending the Motion for a Preliminary Injunction**

The district court awarded attorney fees to the Huycks under the authority of I.C. § 12-123 on the ground that the Mortons had frivolously defended against the Huycks' motion for a preliminary injunction and against their motion for summary judgment to establish the existence of the easement. The Mortons contend that because they stipulated to the entry of the preliminary injunction, the record does not support the district court's award of fees for resisting that motion. We agree.

Idaho Code § 12-123 allows for sanctions for frivolous conduct in litigation. Conduct is frivolous under section 12-123 if it: (1) obviously serves merely to harass or maliciously injure another party to the civil action; or (2) is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. I.C. § 12-123(1)(b); *Merrill v. Gibson*, 142 Idaho 692, 697, 132 P.3d 449, 454 (Ct. App. 2005). The sanctions are limited to an award of reasonable attorney fees, I.C. § 12-123(2)(c), and may be awarded against the offending party, that party's counsel, or both. I.C. § 12-123(2)(d).

Here, the district court awarded fees against the Mortons under this statute because "there appears to be no basis to wait until the last minute only to stipulate to the issuance of a preliminary injunction." This description of the Mortons' behavior falls short of the level of misconduct necessary to sustain an award of attorney fees under the statute. Moreover, the cost bill submitted by the Huycks shows no attempt by them to contact the attorney representing the Mortons after the motion for a preliminary injunction was filed until a telephone conference on the day before the hearing. At that time, the Mortons agreed to stipulate to the entry of a preliminary injunction. The record discloses nothing that was done by the Mortons to resist the preliminary injunction and, therefore, the Huycks failed to show any frivolous conduct on the part of the Mortons. It follows that the district court's summary finding of frivolous conduct made some thirty-six months later cannot be sustained. We therefore remand to the district court to amend the judgment to delete any amount of attorney fees awarded to the Huycks for their pursuit of the preliminary injunction.

**C. Attorney Fees on Appeal**

Both parties request attorney fees on appeal. Because each side has prevailed in part, however, neither is the prevailing party and neither will be awarded costs or attorney fees on appeal.

**II.**

**CONCLUSION**

The district court's order finding the Mortons in contempt and awarding attorney fees for the contempt proceedings is affirmed. The order awarding attorney fees to the Huycks incurred in their pursuit of the preliminary injunction is reversed and the matter is remanded for entry of an amended judgment reducing the attorney fee award consistent with this opinion. No costs or fees on appeal.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**